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VOLVO PENTA of The AMERICAS, Inc.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NICHOLAS TSAMOUDAKIS and PETER TSAMOS,

Plaintiff(s),

-against-

ZERTEK, INC., D/B/A BOAT-N-RV WAREHOUSE,  
JAMES SEGRUE, RANDY RINKER, RINKER BOAT  
COMPANY, AND VOLVO-PENTA,

Defendant(s).

-----X

Docket No.: 07-CIV-6102  
(HB)

**AFFIDAVIT IN  
OPPOSITION TO  
MOTION BY ZERTEK,  
INC.**

**PATRICK J. CORBETT**, an attorney duly admitted to practice law before the  
courts of the State of New York, hereby affirms the following under penalties of  
perjury:

1. He is a member of RUBIN, FIORELLA & FRIEDMAN, LLP, attorneys for  
the defendant VOLVO PENTA OF THE AMERICAS (sued herein as "VOLVO  
PENTA"), and as such he is fully familiar with all of the material facts and  
circumstances heretofore had herein.

2. This affidavit is made in regard to a motion by co-defendant Zertek, Inc., for dismissal of the complaint in its entirety, and to clarify the issue for the Court.

3. The motion is made solely by the seller of the boat at issue, on the basis that an arbitration clause exists in the sales contract.

4. For the reasons set forth in the motion, it appears that the co-defendant James Segreue, who is, upon information and belief, an employee of defendant Zertek, Inc., and the salesman who sold the boat, may also be dismissed.

5. However, these entities are the only defendants entitled to rely upon the sales contract.

6. Volvo Penta of the Americas is not a party to the sales contract, and did not agree to have any disputes or claims against it resolved by arbitration; the contract is solely between plaintiff and Defendant Zertek; movant has produced no document to show otherwise.

6. Should the Court not dismiss the action in its entirety, Defendants Volvo Penta of the Americas, and Rinker Boat Company, the manufacturer of the engine and boat, respectively, will still remain in this case.

7. Accordingly, should the court grant the instant motion solely as to defendant seller, the issues alleged by plaintiffs herein against these defendants, and the same issues alleged against the seller, will be subject to determination in two separate forums, and will be subject to the risk of inconsistent results.

8. Furthermore, this Court also has pending before it a motion by plaintiffs to remand this action; without arguing the merits of that motion here, suffice to say that

if the seller defendants are dismissed, diversity will exist, and this action is subject to removal back to this court from the state court on that basis; judicial economy dictates that the motion should be denied and all claims and defenses heard in this Court.

WHEREFORE, for the foregoing reasons, it is respectfully requested that the Court deny the motion in its entirety.

**Dated:** October 26, 2007  
New York, New York



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TO: (VIA ECF)

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